

early life and always identified with everybody, the cashier at the bank, the guy at the market, the man working at the dump. . . . But that was who he was, kind, generous to people who needed a helping hand. He was a sentimental softie and loved to be a mentor to people, especially his law clerks, shepherding their careers along.

My good friend, Judge Garvan Murtha, said:

He was never afraid to stand up for the rights for others and to name what was wrong. He was a brilliant, caring, funny man and appreciative of people. . . . He was a very wise man. . . . In the Pentagon Papers case, he was dissenting, so he ended up on the wrong side of the Court of Appeals, but the Supreme Court ended up agreeing with him.

His daughter Betsy Oakes said:

I think everyone who loved and admired my father will want to carry on his tremendous spirit of social justice.

Mara tells me of the love all the family had for Jim—and I know the love he had for her, his three children, four stepchildren, grandchildren, and his brother.

Adam Liptak wrote of Judge Oakes in the New York Times, and I ask unanimous consent that his article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 16, 2007]
JAMES L. OAKES DIES AT 83; NIXON CHOICE
FOR FEDERAL BENCH
(By Adam Liptak)

James L. Oakes, who was appointed to the federal appeals court in New York by President Richard M. Nixon and yet quickly became one of its leading liberal voices, died on Saturday in Martha's Vineyard, Mass. He was 83.

His death was reported by his wife, Mara Williams Oakes, who said it followed a brief illness.

Judge Oakes served for 36 years on the court, the United States Court of Appeals for the Second Circuit. He was its chief judge from 1988 to 1992.

Scholarly and gregarious, Judge Oakes insisted in his decisions, speeches and writings that judges should never shy away from protecting fundamental rights.

He had little patience, he wrote in a 1997 article in *The Columbia Law Review*, for politicians who attacked such rulings as improper activism. Historic moments, he added, sometimes required judges to act "when the rest of our political structure bogs down."

In this sense, he was, he wrote, "old-fashioned—fashioned from the thirties of the Great Depression, the forties of war and the Holocaust and fascism, the fifties of the cold war and McCarthyism and Little Rock, and the sixties of the civil rights movement, the assassinations and the would-be Great Society."

James Lowell Oakes was born in Springfield, Ill., on Feb. 21, 1924.

After graduating from Harvard College and Harvard Law School, Mr. Oakes served as a law clerk to Harrie B. Chase, a Vermont judge who sat on the court that Mr. Oakes would one day join.

Mr. Oakes then spent two decades practicing law and working in the state government in Vermont. In the 1960s, he served for four years in the State Senate and two as the state attorney general. President Nixon made him a federal district judge in Vermont in 1970 and elevated him to the appeals court in 1971.

But Judge Oakes was not proud of the connection. In the years after the Watergate

scandal, he used adhesive tape to cover the signatures of President Nixon and Attorney General John N. Mitchell on the judicial commission that hung in his chambers, one of his former clerks, Paul M. Smith, recalled.

Judge Oakes's name soon became synonymous in some circles with liberal jurisprudence. In 1981, he attracted the attention of a young lawyer in the Reagan administration named John G. Roberts Jr. Mr. Roberts, who is now the chief justice of the United States, told his superiors, according to *The Washington Post*, that a civil rights policy he advocated was reasonable because "even such an extreme liberal" as Judge Oakes had approved it.

The Second Circuit is based in Manhattan, and it hears appeals from New York, Connecticut and Vermont. Judge Oakes's chambers were in Brattleboro, Vt., and he visited New York to hear arguments and to confer with his colleagues. After his service as chief judge ended in 1992, he assumed senior status, a sort of semi-retirement.

Besides his wife, of Brattleboro, survivors include a brother, John D. F. Oakes of Wayne, Pa.; three children from an earlier marriage, Cynthia O. Meketa of Bonsall, Calif., Elizabeth H. Oakes of Baltimore, and James L. Oakes of Fairfield, Conn.; and six grandchildren.

In both his judicial and scholarly work, Judge Oakes advocated environmental protections, procedural rights for people accused of crimes, free speech, open government and limits on intellectual property laws.

Among the rulings he was proudest of, his law former clerks said, were a 1980 decision upholding regulations barring sex discrimination in education, a 1987 decision applying the principle of one-person-one-vote to New York City's Board of Estimate, and a 2000 decision allowing illegal immigrants to challenge deportation orders in court. All three decisions were affirmed by the Supreme Court.

Judge Oakes especially prized the Supreme Court's vindication of his 1971 dissent in the Pentagon Papers case, two of his former clerks, Kathleen M. Sullivan and William Treanor, wrote in *The New York Law Journal* in March. The majority in the Second Circuit had blocked the publication of the papers, a secret history of the Vietnam War obtained by *The New York Times*. The Supreme Court reversed that decision.

"The press should not be regarded only as a check on inefficient or dishonest government," Judge Oakes said in a 1982 lecture on the legacy of the Pentagon Papers case. "It is important that it also be viewed as a powerful vehicle for the effective functioning of a government that by definition is democratic in nature." That required, he said, a near-absolute ban on prior restraints on publication of news articles.

Justice Ruth Bader Ginsburg said in a statement yesterday that Judge Oakes was the "model of what a great judge should be—learned in the law, but ever mindful of the people law exists to service."

Judge Oakes could be prescient. He dissented from a 1979 decision endorsing the use of an anonymous jury in an organized crime trial. The decision, he said, was "without precedent in the history of Anglo-American jurisprudence" and "strikes a Vermont judge as bizarre, almost Kafka-esque."

He added, correctly, as it turned out, that other courts would follow the precedent as surely as "a flock of sea gulls follows a lobster boat."

Mr. LEAHY. Mr. President, I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION APPROPRIATIONS ACT, 2008

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 3043, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3043) making appropriations for the Departments of Labor, Health and Human Services, and Education and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

Pending:

Harkin/Specter amendment No. 3325, in the nature of a substitute.

Vitter amendment No. 3328 (to amendment No. 3325), to provide a limitation on funds with respect to preventing the importation by individuals of prescription drugs from Canada.

Dorgan amendment No. 3335 (to amendment No. 3325), to increase funding for the State Heart Disease and Stroke Prevention Program of the Centers for Disease Control and Prevention.

Dorgan amendment No. 3345 (to amendment No. 3325), to require that the Secretary of Labor report to Congress regarding jobs lost and created as a result of the North American Free Trade Agreement.

Menendez amendment No. 3347 (to amendment No. 3325), to provide funding for the activities under the Patient Navigator Outreach and Chronic Disease Prevention Act of 2005.

Ensign amendment No. 3342 (to amendment No. 3325), to prohibit the use of funds to administer Social Security benefit payments under a totalization agreement with Mexico.

Ensign amendment No. 3352 (to amendment No. 3325), to prohibit the use of funds to process claims based on illegal work for purposes of receiving Social Security benefits.

Lautenberg/Snowe amendment No. 3350 (to amendment No. 3325), to prohibit the use of funds to provide abstinence education that includes information that is medically inaccurate.

Roberts amendment No. 3365 (to amendment No. 3325), to fund the small business child care grant program.

Reed amendment No. 3360 (to amendment No. 3325), to provide funding for the trauma and emergency medical services programs administered through the Health Resources and Services Administration.

Allard amendment No. 3369 (to amendment No. 3325), to reduce the total amount appropriated to any program that is rated ineffective by the Office of Management and Budget through the Program Assessment Rating Tool (PART).

Coburn amendment No. 3358 (to amendment No. 3325), to require Congress to provide health care for all children in the U.S. before funding special interest pork projects.